

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

| | | |
|--|---|----------------------|
| PEYTON RUUD, a minor, who sues |) | |
| by and through her mother and |) | |
| next friend, TATUM RUUD, <i>et al.</i> , |) | |
| |) | |
| <i>Plaintiffs,</i> |) | |
| |) | |
| vs. |) | CASE NO. 2:05-cv-640 |
| |) | |
| SEARS, ROEBUCK & CO., <i>et al.</i> , |) | |
| |) | |
| <i>Defendants.</i> |) | |

AFFIDAVIT OF DAVID E. ALLRED

My name is DAVID E. ALLRED. I am counsel for the plaintiffs in the above-referenced matter. I have personal knowledge of the matters set forth herein.

On June 9, 2005, I filed a complaint in the Circuit Court of Montgomery County, Alabama on behalf of Peyton Ruud, a minor, who was injured on June 16, 2003 on a treadmill manufactured by Defendant Icon and sold by Defendant Sears. Prior to the filing of the suit and in settlement discussions before suit, it appeared that the injuries to the child's hand would result in permanent disfigurement, as well as limitations on use of the hand.

The defendants removed the case to this Honorable Court on the basis of diversity jurisdiction.

The undersigned counsel recently met with Tatum Ruud, the child's mother, and Peyton Ruud, the minor, and upon observation of the child, as well as conversations with the child's mother, it is apparent that the child's injuries are not as permanent as was initially expected. As a result of this information, the case has been re-evaluated and both

the undersigned counsel and the child's mother, plaintiff herein, agree that the fair value of the plaintiff's claims against these defendants does not exceed the sum of \$74,500.

Counsel has, therefore, been authorized to amend the complaint to state the specific amount in controversy of no more than \$74,500. Moreover, the undersigned counsel has discussed with the plaintiff, Tatum Ruud, that the complaint cannot be amended at a later date to seek damages in excess of the amount claimed, \$74,500, and that should this case be remanded to the Circuit Court of Montgomery County, the damages sought or received cannot exceed the total sum of \$75,000, plus the costs of this action.

That the total of medical expenses incurred by the minor child concerning her injuries is \$4,849.50, to date.

Attached to this affidavit is a copy of correspondence of this date sent to counsel for the defendants offering to settle all claims for \$70,000 with the proviso that this figure, as well, is negotiable.

The undersigned counsel, as an officer of this Court, files this motion, as well as this affidavit, in fulfillment of a duty of candor to the Court with regard to the fair value of the plaintiffs' damages claim based upon the most recent information. Counsel further states unto the Court that he will not amend the complaint to seek an amount in excess of \$75,000, will not request a verdict in excess of \$75,000, and that he has counseled the plaintiff, Tatum Ruud, that should any judgment be rendered in excess of \$75,000 in this case, then said judgment must be satisfied in full upon the payment of no more than \$75,000, plus the costs of this action, and Tatum Ruud is in agreement to do so.




DAVID E. ALLRED

STATE OF ALABAMA)

COUNTY OF MONTGOMERY)

SWORN TO AND SUBSCRIBED BEFORE ME, this the 16th day of March 2006.

(SEAL)



NOTARY PUBLIC
My commission expires: 7/31/06